

## **802 KAR 1:010. Tax appeal procedures.**

RELATES TO: KRS 12.027, Chapter 13B, 49.220, 49.230, 49.240, 49.250, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020, 49.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be immediately established within the Public Protection Cabinet, and to include the Board of Tax Appeals. The Order also sets forth the powers and duties of the Board of Tax Appeals, and authorizes the board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the board's statutory authority. KRS 49.020(5) authorizes the board to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.220(1) authorizes the board, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals.

Section 1. Definitions. (1) "Board" means the Board of Tax Appeals.

(2) "Office" means the Office of Claims and Appeals.

Section 2. Rules for Filing Tax Appeals with the Board. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition with the board for a formal hearing in accordance with KRS Chapter 13B.

(2) Timing. The initial petition of appeal shall be received by the board within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal. If the determination is not mailed, then the initial petition shall be considered as received by the board within (30) days of the date of issuance.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, but deficient, the board, office, or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) business days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or the signature of counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the board shall provide notice to:

(a) The appellee that an action has been filed;

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.

(5) Upon receiving a Petition of Appeal, the appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the board. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if applicable.

Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

(a) In person or by private delivery to Board of Tax Appeals, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) By mail to the address listed above; or

(c) By electronic mail to [taxappeals@ky.gov](mailto:taxappeals@ky.gov) if the document can be sent in one (1) electronic message.

(2) Service.

(a) Any party who files a pleading or motion with the board or hearing officer shall notify all other parties to the appeal by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, by electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

Section 4. Representation in Proceedings before the Board. (1) If the appeal is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.

(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1) of this section, the entity shall be represented by an attorney on all matters before the board, including the filing of the appeal.

(4) An attorney licensed to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

Section 5. Discovery. (1) Discovery may be obtained without prior order of the board or hearing officer. Except to the extent the provisions of this section differ, the Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) Absent a stipulation between the parties or an order issued by the board providing otherwise, and at least ninety (90) days before the date set for the hearing, a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experience, training, or education the party may use at the hearing to provide expert testimony; or

(b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3) The board or hearing officer may deny, limit, or require discovery.

(4) If a party fails to comply with an order regarding discovery, the board or hearing officer may order that the:

- (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;
  - (b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;
  - (c) Appeal be dismissed or relief be granted as requested by the opposing party;
  - (d) Appeal be stayed until the order is obeyed; or
  - (e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.
- (5) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by order of the board or hearing officer.

Section 6. Prehearing or Status Conference and Hearing Schedule. (1) In any appeal assigned to a board member or hearing officer, the board or hearing officer may schedule a prehearing or status conference. The prehearing or status conference may be conducted by telephone or other electronic means upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless otherwise agreed to by the parties.

(2) A prehearing or status conference may be used to set a hearing date, discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(3) If the board member or hearing officer and parties cannot agree upon a hearing date, the board member or hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference.

(4) Upon conclusion of the prehearing or status conference, the board member or hearing officer shall issue an order including all matters determined at the prehearing or status conference.

Section 7. Prehearing Filings. (1) At least thirty (30) days prior to the hearing, a party shall file with the board or hearing officer a:

- (a) Prehearing summary that contains a:
  - 1. Summary of the party's position on any issue of fact in dispute;
  - 2. Summary of the party's position on any issue of law raised by the appeal; and
  - 3. Written statement of facts to which the party agrees and any facts which a party does not dispute;
- (b) List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing;
- (c) Copy of all exhibits that the party intends to introduce at the hearing;
- (d) Proposed findings of fact and conclusions of law; and
- (e) Proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

(2) The prehearing filings required by this section shall satisfy the requirements under KRS 13B.090(3) establishing a party's right to inspect a list of witnesses and documentary or tangible evidence at least five (5) days prior to the hearing. The board may issue a prehearing order modifying discovery procedures or deadlines, or mandating additional requirements for prehearing filings.

Section 8. Motion Practice. (1) Any party may file a motion. Any party affected by a motion or pleading may file a response to the motion or pleading within thirty (30) days from the date on which the motion or pleading was served.

(2) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the board or hearing officer.

Section 9. Briefs. A party shall file with the board or hearing officer any brief required by order of the board or hearing officer. The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 10. Summary Disposition. (1) At any time after the commencement of an appeal, a party may move for a summary disposition of the whole or a part of the appeal by filing a motion that:

(a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board or hearing officer;

(b) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the petition of appeal, including exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee; and

(c) States that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.

(2)(a) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the Petition of Appeal, demonstrating the party's assertion that a material fact or facts are disputed.

(b) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may result in the board or hearing officer finding there are no disputed factual issues to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(4) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 11. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B. (KTA-1; 1 Ky.R. 47; eff. 10-2-1974; Am. 3 Ky.R. 398; eff. 12-1-1976; 4 Ky.R. 456; eff. 7-5-1978; 12 Ky.R. 1760; eff. 6-10-1986; 25 Ky.R. 434; 880; 26 Ky.R. 612; eff. 8-26-1999; 2202; 3217; 4164; eff. 7-6-2007; TAm eff. 9-27-2016; 44 Ky.R. 2106, 2325; eff. 6-1-2018; 45 Ky.R., 2470; eff. 5-31-2019; 47 Ky.R. 794, 1382; eff. 4-6-2021.)